

The Empress Vs. Nistar Raur

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Court : Kolkata

Decided On : Jun-28-1880

Reported in : (1881)ILR6Cal163

Judge : Tottenham and ;Maclean, JJ.

Appellant : The Empress

Respondent : Nistar Raur

Judgement :

Maclean, J.

1. This is a reference made by one of the Presidency Magistrates of Calcutta, under Section 240, Act IV of 1877, submitting for the opinion of the Court three questions of law arising out of a prosecution under Act XIV of 1868, Section 2.

2. The first question raises a point which does not affect the case before the Magistrate, who has to decide whether the person charged before him has committed the offence imputed. We think it unnecessary to express any opinion on this point.

3. We think that, as every woman registered under the Act has an absolute right to have her name removed 'from the book,' if she is desirous of ceasing to carry on the business of a common prostitute, any rule which raises any obstacle to the

exercise of that right is not in accordance with Section 21 of the Act. Part of the 13th rule referred to by the Magistrate, commencing 'may postpone' and ending 'satisfied he,' appears to be ultra vires. We answer the second question in the negative.

4. The third question refers to the Magistrate's competency to entertain a woman's plea that she is no longer lawfully retained on the register, and is therefore not liable to be punished for breach of the rules applicable to registered women. In our opinion, a woman prosecuted for an offence under Section 11 is not precluded from pleading that she has ceased to carry on the business of a common prostitute; that she has taken the steps prescribed by Section 21 and the rules framed in accordance therewith to obtain the removal of her name from the register; and that, if it is still retained there, it is retained contrary to law. This opinion is, we think, supported by the authority of this Court in the case to which the Magistrate refers-In the matter of Lakhimani Raur (3 B. L. E., A. Cr., 70). It was there held, that the Magistrate was bound to enquire into the plea that the woman before him had not been lawfully registered, because she has not consented to it; and, on the same principle, we think that, in the present case, it is the Magistrate's duty to determine whether or not the woman has been lawfully retained upon the register ; and if not, whether she had, in fact, ceased to carry on the business of a common prostitute or not when the proceedings were taken against her.

Tottenham, J.

5. I have no doubt that Rule 27 is legal in authorizing arrest without warrant, but the Magistrate cannot go into this question. I think that Rule 13 is beyond the scope of Section 21 of the Act in allowing the Commissioner of Police to retain a woman's name on the register as long as it pleases him to do so. I read the law as leaving it at the option of the woman to be put on the register and to remain on it. She comes off at her own peril, but there is no authority given by law for keeping her name on the register against her will.

6. I also think that a woman brought before the Magistrate for breach of rules under Section 11 of the Act is entitled to plead that she has conformed to the

procedure by Government under Section 23 of the Act; that she is not a common prostitute ; that if she is still on the register, she is kept there against the law, and is not liable to be punished for neglecting to attend for examination. The Magistrate, I think, should acquit her if he finds her plea to be true.

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